



COMMISSION O F JUSTICIARY



For Securing the Peace of the Highlands.

WILLIAM by the Grace of GOD, King of Great-Britain, France and Ireland, Defender of the Faith ; To all and sundry to whose knowledge these presents shall come, Greeting : Forasmuch as, We for punishing and repressing of Thifts, Depredations, Robberies, Sornings and the like Crimes and Disorders within the Bounds of the Highlands, and for the better settling of Justice, Peace and good Order there, and in all the neighbouring Bounds, specially within the Shires of Cathenes, Sutherland, Ross, Inverness, Cromartie, Nairn, Elgine, Bamff, Aberdeen, Kincardine, Forfar, Perth, Stirling, Dumbartoun, Argile, Tarbat, Bute; and others adjacent : Which Shires are to be divided into three Districts, in manner after-mentioned, have thought fit, by virtue of Our Prerogative Royal, to grant the Commission of Justiciary following, to the persons after-named, to whom also the Earl of Argile and others having heretale Rights of Justiciary, are to grant their Commissions at least to so many of them who are willing to act by vertue of the same, and that for the whole Bounds within their said respective heretale Justiciaries, in the terms of the several Acts of Our current Parliament, relating to the Justiciary-Court in the Highlands ; And which Commissions are to contain all the necessary and usual Powers, that the saids Commissioners being of Consent fully empowered, may Act and proceed more effectually for punishing & repressing the Crimes above-mentioned. Therefore We do hereby grant full Power, Authority, and Commission, express Bidding and Charge to Our Justice-General, Justice-Clerk, and Lords Commissioners of Justiciary, John Earl of Tullibardine Our principal Secretary of State, Archibald Earl of Argile, the Earl of Marr, the Earl of Sutherland, the Earl of Finilater, the Earl of Buchan, the Earl of Strathmore, the Earl of Kin-tore, the Viscount of Tarbat, the Lord Strathnaver, Lord James Murray, the Lord Glenurkhy, the Lord Saltoun, the Lord Rae, the Lord Ruthven, the Lord Duffus, Sir James Ogilvie Principal Secretary of State, the Master of Forbes, Sir James Scougal of Whitehill, Sir Patrick Ogilvie of Boyne, Ludovick Grant of that Ilk, William Dunbar of Durris, Alexander Ogilvie of Forglen, John Ogilvie of Kempeairn, Alexander Hay of Ardenbath elder, Nicolas Dunbar of Castlefield, Grant of Belnatoun elder, Mr. Francis Grant of Belnatoun younger, Alexander Leslie of Kininvie, Sir Thomas Burnet of Leyes, Sir George Sinclair of Clyth, William Dunbar of Hempric, Mr. John Campbell Commissar

missar of Caithness, Sir Adam Gordon of Dalfolly, Mr. John Gordon of Carrell,
 Dumbar of Sydery, David Ross of Balnagowan, Monro
 of Fowlis, Hugh Monro of Tennush, Sir Alexander Mackenzie of Cowl, Sir
 Donald Bain of Tulloch, George Monro of New-more, Mr. Simon Mackenzie
 of Tarradell, Mackintosh of that Ilk, Duncan Forbes of Colloden,
 Alexander Chisholm of George Cuthbert of Castle-hill, Mr. David
 Polson of Kinmyles, Mr. Alexander Ross of Clava, Robertson of
 Inches Campbell of Calder younger, James Frazer of Relict
 Frazer of Balnamain, David Broddy of Lethem, David Cuthbert Sheriff-De-
 putie of Nairn, Broddy of that Ilk, George Broddy of Afsilk, Lu-
 dovic Dumbar of Grange, Robert Dumbar of Dumfaill, Innes
 younger of that Ilk, William Duff of Dipple, James Grant of Galloway, John
 Grant of Clay-furrs, Grant of Arntilly, Alexander Duff of Braco,
 Sir James Abercrombie of Birkenbog, John Anderson of Westertoun, Alexan-
 der Duff of Drummuir, Charles Gordon of Glengarrack, Sir John Forbes of
 Craigievar, Arthur Forbes younger of Eicht, Leslie of Kincraigie
 Sir James Gordon of Lesmore, Archibald Forbes of Lickliehead, Arthur Forbes
 of Auchintoul, Sir Robert Gordon of Gordonstoun, Thomas Hay of Balhousie,
 Lieutenant Collonel John Areskin, Sir William Stirling of Airdoch, Sir Thomas
 Murray of Glendoick, James Hepburn of Menstrie, Adam Drummond of Meggins,
 Robert Stuart of Ardvorlech elder, Stuart of Ardvorlech younger, James Ram-
 say of Bamff, Mr. Leonard Robertson of Straloch, Mercer of Clavade, James
 Menzies of Culdair, John Cunningham of Baldalloch, Cunningham
 younger of Buquhan, William Stirling of Harbertshire, Alexander Monro of
 Bearcroftis, Sir Humphry Colquhoun of Luss, John Mcfarland of Erchor
 younger, Patrick Murray of Dullery, John Blair of Corbs, James Herron of
 Callie, Alexander Robertson of Fasically, Captain James Menzies Tutor to the
 Laird of Weymes, Menzies of Sluan, Lachlane Mackintosh Tutor of
 Dalmungo, Craigie of Dumbarnie younger, Cree
 Provost of Perth, Colin Campbell of Lochland, James Drummond of Comry, Mr.
 William Murray of Arbeny, Campbell of Balgershoelder, Alexander
 Robertson of Craig Baillie of Perth, Sir Colin Campbell of Ardkindlas, Sir Dun-
 can Campbell of Auchinbreck, Sir John Campbell of Carrick, Archibald Campbell of
 Inneraul, Alexander Campbell of Balcardine, Alexander Campbell of Lochneill,
 Donald Campbell Baillie of Mackairn, Alexander Campbell of Kilmartoun, George
 Campbell of Craignes younger, Cameron of Glendethry, Sir John
 Hill Governor of Fort-William, & Lieutenant-Collonel Forbes, or the Deputy
 Governor thereof, conjunctly and severally, to pursue, follow, take & apprehend
 Imprison, and present to Justice all persons within the following Shires,
 of Caithness, Sutherland, Ross, Inverness, Cromartie, Nairn, Elgine, Bamff,
 Aberdeen, Kincardine, Forfar, Perth, Stirling, Dumbritan, Argile, Tarbat,
 Bute, and others Adjacent, Guilty or Suspected to be guilty of Thift, Resett
 of Thift, Robries, Depredations, Sornings, Thigging, exacting of Black-mail
 or any other Oppressions, Banestries, masterful or menacing Exactions, com-
 muning with intercommuned Persons, Man-slaughters, Murders, harbouring
 or Resetting of Out-laws, the transgressors of the Law concerning the Clan
 Gregor, hounding-out or Ratiabitng Thiefs, Robbers, Sorners, and o-
 thers guilty of the foresaid Crimes, and securing the Peace of the High-lands,
 and incouragement of Vertue, and learning and settling Industry amongst them
 And in case any Persons within the bounds foresaid cannot be apprehended
 and presented to Justice, We hereby give Warrant to the saids Commissioners
 or any one or two of them to issue forth Precepts, direct to Sheriffs, Officers,
 Stewarts, Baillzie, Mayors, or Constables, to charge them to compear at the
 first Justice-court before the saids Commissioners, or any five of them who are
 hereby declared to be a Quorum, And where there is not already a sufficient num-
 ber

ber of Sheriff-Officers and other Officers with Power to the saids Commissioners, or any two of them to appoint Officials within the several Paroches of the saids Bounds, which Officials are to have the same Power, given to Constables by the Act of Parliament 1661, And who are to give an account on all occasions to the next adjacent Commissioners, and to cite before them all Persons within the saids Bounds, *Male fame*, and suspected of Thift, correspondents with Theives or of any of the Crimes above-mentioned, that they may be secured and tryed by an Assize and be either purged by an Assize or punished, and farder if need require to find sufficient Caution, and to declare that a Citation to be used at the Mercat-cross of the head Burgh of the Shire where the have most frequently haunted, against the said Thieves, their Resettters and others guilty of the Crimes foreaid, who have no dwelling-houses to compair before the saids Commissioners, shall be als sufficient as if they were personally Charged in respect of the uncertainty of their Residence and difficulty of access to them, and where they have Places of Residence they are to be Cited personally or at their dwelling places, if there be *tutus accessus* and if not at the head Burgh of the Shire where they dwell, with Power to the said Commissioners or any *Quorum* of them, at their several meettings, to make choice of their own President to continue only for that meeting and to fence & hold Courts of Justice, and to creat Fiscals Serjeants, Dempsters and all other members of Court, as also to regulate the pryses & correct the abuses of their Clerks or deprive them in case of malversations, as likeways with power to the said Commissioners or any *Quorum* of them to cite witnesses, to call persons to pass upon Inquest, out of any six Paroches adjacent to the place where they hold their Courts, Absent witnesses & Assizers to un-law, & americat, the un-laws & americaments to uplift and exact to be applyed by the said Commissioners, for defraying some part of the Expences, & the Fees of the other members of Court; And in the said Court to call the said persons, either cited or imprisoned as guilty, or suspected to be guilty of the foresaid Crimes, or any of them; and to declare such as are absent Fugitives from the Laws, and to issue forth their precepts for denouncing them Rebels, and putting them to the Horn, and to intercommun according to Law, and the practice in such cases and ordaining all their Moveable goods to be Escheat, and in brought for Our use for their contempt and disobedience, & such as shall compair and be brought before them as prisoners to put them to tryal, and the knowledge of an Assize, and according as they shal be found Innocent or Guilty, that they cause Justice be done upon them, conform to the Laws and practise of the Kingdom; provideing always that when any Landed-man is cited or brought before the said Commissioners, as guilty or suspected to be guilty of Thift, or the resett of Thift, if he compair and be put to the knowledge of an inquest, the said Commissioners or such of them as shall happen to sit for the time shall before pronouncing of Sentence condemnatory either as to Life or Limb, be obliedged to report the state of the process to the Lords of Our Privy Council, that they may give such directions therein as they shal think fit, but if they compair not and be declared Fugitives that their moveables be intromettet with and Escheated as other Fugitives, And we do hereby give Power and warrand to the said respective Commissioners to intromett with, uplift and receive, the said Escheat goods of such as shall be convict, or declared Fugitives in manner foreaid, to be applyed for Defraying any part of the expenses of the saids Commissioners, and members of Court in the Execution of this Commission, with Power to them to nominat and appoint Collectors of the same. And for rendering the Decrets and Sentences of the saids Commissioners more firm and effectual to the obtainers thereof, & for their further encouragement, to administer Justice to Our good Subjects, and to secure the peace of the Countrey, within their respective bounds; It is Our express Will and Pleasure, and we strictly require and Command the Decrets,

Acts, and Sentences, to be pronounced by them in manner foresaid; to be put in all due and lawful Execution, Prohibiting hereby and discharging the Lords of Our Privy Council, Lords of Session, and Lords of Justiciary, to pass any Bills of Advocation upon any ground or pretence whatsoever; As also prohibiting and discharging the saids Lords of Privy Council & of Session, and Justiciary, to Pass any Bills of Suspension or to grant any Sists of Procedure, and Execution of the saids Decrees or Sentences upon any ground or pretence whatsoever, unless the said Suspension or Sist of execution be first cognosced, or granted by a *Quorum* of the Council Signeing the same, and if notwithstanding the Suspension or sist, the Decree be sustained, and the Letters found orderly proceeded, the Suspender shall also be decerned at least in a third part more than the Sums charged for, with what more the Lords of Privy Council shall Judge reasonable to the Charger for his Expences and Damnage, and for the more effectual rootting out, of all Thifts and Roberies, We do allow and approve, that at their first meeting or any other Meeting or Meetings they shall judge convenient; They Summond before them all Heretors, Liferenters, Wod-setters, present Possessors of any Lands or Estate within the Highlands of the foresaid Shires, & exact from them true lists of all men above twelve years of Age that live upon their Lands, whom upon Citation they are to present when called, for whom they are to give Bond and Caution conform to the Acts of Parliament: And that these for whom no Security can be had may be disposed of by the Commissioners or their *Quorum* aforesaid, so as they may be no more a trouble to the Peace of the Countrey, and if any of the saids Heretors and others above-mentioned appear not or refuse to give Bond and Caution and lists or give up untrue ones, then and in that case We ordain that either they be proceeded against as absents, or as Harbourers and Refettors of Thieves & out-laws and We hereby appoint the first general Metting of the saids Commissioners to be at *Eorfar* upon the first *Thursday* of *June* next to come, And there to hold Court, Adjourn and appoint new dyets as they shall find expedient; And to the effect their Meetings may be the more Exact and better calculat for the dispatch of business; But without derogation of the power given to the saids Commissioners to adjourne their Meetings as they shall think fit, We hereby appoint one of the Commissioners above to be Conveener of the rest in each district, when any occasion falls out which requires their Meetings before the day to which they were adjourned, according to the Division after-mentioned, *viz.* For the North District including the Shires of *Caitness*, *Sutherland*, *Ross*, *Inverness*, *Cromarty*, *Nairn*, *Elgine*, *Bamff*, *Aberdeen*, and *Kincardine*, The Earl of *Finstlater*, and in his absence the Laird of *Grant*, And for the middle district, including the Shires of *Forfar*, *Perb*, *Stirling*, and *Dumbartoun*; The Earl of *Tullibardine*, and in his absence the Lord *Ruthven*. And for the West district including the Shires of *Argyle*, *Tarbat*, and *Bute*, The Earl of *Argyle*, and in his absence Mr. *John Campbel Sheriff-Deput of Argile*; Which Conveenors are to appoint the most convenient times and places for the rest of the Commissioners, or at least a *Quorum* of them to meet at: Hereby also requiring such as are so called to give attendance and not to be absent unless upon relevant Grounds, and whereof they are to certifie the Conveenors under the pain of losing their Share of the trust and authority, hereby committed unto them, And sicklike nominates and appoints the foresaid Conveenors or major part of them to be Convener, for calling together the general Metting of the Commissioners of the whole Districts, once or twice a year, or oftner as they shall think necessary at such Times and Places as they shall think most proper and convenient, allowing also that notwithstanding of the Division hereby made in particular Districts, That all persons named in this Commission have Right and Power to act as Commissioners and

and sit in any Justice Court holden by vertue hereof, as weel without the District where they live as within the same, as also with Power to the said Commissioners or any of them in case of Convocations, or open Depredations, to call and require Our Leidges to their assistatice, and give Warrant to pursue all Fugitives within the said Shires, for apprehending them and presenting them to Justice, as also to require all Sheriffs, Stewarts, Baillies of Royallities, Regalities and Baronies, to be aiding and assisting to them therein as they shall be required by the said Commissioners or any one of them for apprehending Fugitives and recovering goods, taken by Heirships or Depredations, wherein they are not to fail as they shall be answerable upon their Duties and Offices, and the said Sheriffs and other Judges ordinary are ordained not only to give concurrence and aid to the said Commissioners as they shall be required, But also to afford them Prison-houses in Burghs, and Court-houses for keeping their Meetings, and upon all occasions the said Sheriffs and Magistrates of Burghs Royal are hereby ordained to receive any Prisoners, sent to them by the said Commissioners or any one of them, with a *mittimus* under their hand for that effect, and keep and detaine them in sure Prison, untill they be brought unto a legal tryal, or dismiss by order of a *Quorum* of the saids Commissioners in write And if it should happen that the Fugitives do escape out of all the foresaid Shires, in that case they are to acquaint the Judges ordinary of the Shires to which they have resorted, who are hereby ordered to apprehend them or failing thereof to pursue them out of their Jurisdiction; And to the effect that such Transgessors may be notourly known: The Commissioners who shall declare any Fugitives, shall make Intimation of their Names and Designations to the Clerks of Our Privy Council, that the same may be Printed and published to the Sheriffs of the next adjacent Shires to the place where such a Court is holden, and the Sheriffs are to cause intimat the same at the Paroch Churches within their respective jurisdictions, that no person presume to refet supply or harbour them; And We hereby appoint that the Clerks of the respective Courts, shall give account to the Clerks of Privy Council what Persons are condemned, and what Persons are declared Fugitives, and that twice in the year, once in the Month of *May*, and once in the Month of *September*. that the Lords of Privy Council may know the Condition of these Shires, and what diligence the said Commissioners use in the prosecution of the said Commission; and further for defraying the Commissioners Charges we allow them to decerne for and to add a tenth part to each Lybel and Decreet pronounced by them, which Tenth-Part is to be payed to the said Commissioners by the saids Defenders if they succumbre in the Cause, and by the pursuers in case the Defender be assoltied, And We hereby require the Commanders of our Forces, and Governour of *Inverlochie* and Commandants of particular Garrisons or any other Officers of our Forces, to give parties of Horse and Foot, from time to time to attend the said Courts as they shall be advertised by the Commissioners that are to hold them, As also, the said Governour or any other Officer of the said Forces, are hereby required to give concurrence at Poyndings, and to convey the said Goods so poynded out of Danger & Deforcement and that without any reward: As also, to apprehend and seize any person or Persons contained in lists, to be given in to them by the said Commissioners. And likeways, We do hereby appoint Collonel *John Hill* and Leutennant Collonel *Forbes* his Deputy Governour at *Inverlochie*, and failing of them, the persons succeeding to them in the saids Charges, to be Members of this present Commission, allowing the said Governour to discharge the duty of a Cottveener, if need be: And for making distinction betwixt peaceable and honest Men, and Thieves and Broken persons, no person living within any part of the *Highlands* of the said Shires, are to bring any Cows, Horse, or other Bestial to any Mercate without a Testificat of a Landed-man

(7)

in Write, bearing the Number of the Beasts, and Name and Place of Residence of the Drover, and attesting that they are, leelly come, under the pain of Seisure and Confiscation thereof as stolen Goods, and if some such Testificat should be granted, and afterwards it should be found that any of thesaids Beasts should be stolen, the Landed-man Attester shall be lyable as if he were guilty in so far as shall be extended to Restitution and Damage, and what the Law provides without any favour, and Masters and Magistrats who have power of Mercats, and Clerks thereof, are hereby discharged to permit any Beasts to be Sold or Bought at any Mercats, till the Seller deliver unto him his said Certificat ; With Certification that the Magistrats, Master or Clerk, shall be lyable for any Beasts so sold, and whereof the Clerk keeps not the Certificat aforesaid, as if they were Airt and Part of the Theft themselves, in so far as extends to Restitution as said is : And its hereby Declared, that it shall not be lawful to any person in the *Highlands*, to travel with Arms from the ordinary place of their Residence, without a pass or Certificat from the Sheriff or his Députs, or from a Justice of Peace, or any of the saids Commissioners, or Ministers within the Bounds of the Place from which he is to travel, bearing the occasion thereof which is to have a particular Date, and to continue only for that Journey, with Power to the said Commissioners, or any of them or any having their warrand to seize upon, apprehend and imprison all such persons wanting passes as aforesaid as Thieves, Sorners and Vagabounds ; till they find Caution for their good behaviour, and answer to any accusation that can be brought against them. And it is likeways hereby declared that this Our Commission shall be no ways prejudicial to the Right and Jurisdiction of any Sheriffs, Stewarts and Baillies of Royeal-lities, and Lords and Baillies of Regalities, who all and ilk an of them may proceed notwithstanding thereof, against Persons guilty of thift, & the receipt of Thift, and other Crimes aforesaid in the same way and manner as they were formerly in use to do conform to the Laws if they be the first attachers and shall prevent the said Commissioners in diligence. And further, if it shall be found needfull by the Persons already named in this Commission, that any others be added unto them for their assistance, We do hereby impower, the Lords of Our Privy Council, upon application made to them by a *Quorum* of the Commissioners of any of the three Districts, to add to this present Nomination, such person or persons as the said Court shall petition for, who are hereby impowered to Meet and Act as Commissioners of the said District : And this Our Commission is to continue and endure to the last day of December 1699 years, unless the same shall be Revoked or Recalled by Us before that time ; In Testimony whereof, Our Great Seal is hereto appended.

Given at Our Court at Kensington the Thirty day of March 1697,
and of Our Reign the Eight Year.

GOD save the King.

Edinburgh, Printed by the Heirs and Successors of Andrew Anderson, Printer
to the King's most Excellent Majestie, Anno DOM. 1697.